

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-01-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S. RAJESWARAN

HABEAS CORPUS PETITION NO.960 OF 2006

P. Palanisamy
S/o. Pandurangam

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Govt.,
Prohibition & Excise Department,
Fort St. George,
Chennai 600 009.

2. The Commissioner of Police,
Salem City,
Salem District.

.. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Habeas Corpus to call for the records in C.M.P.No.18/Goonda/Salem City/2006 dated 3.8.2006 passed by the second respondent and quash the same as illegal and direct the respondents to produce the detenu Muthu, son of Palanisamy, now confined in Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.R. Sankarasubbu

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

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J U D G M E N T

P.K. MISRA, J

This Habeas Corpus Petition has been filed by the father of the detenu, who has been detained under Act 14/1982, by virtue of the order passed by the second respondent, namely, the Commissioner of Police, Salem district, dated 3.8.2006, which has been subsequently

confirmed by the first respondent, namely, the State of Tamil Nadu.

2. The detention is based on five adverse cases and one ground case. Adverse cases had been registered under Sections 147, 148, 368, 341 and 324 IPC in Cr.No.980 of 2001, under Section 379 IPC in Cr.No.246 of 2005, under Section 302 IPC in Cr.No.538 of 2005, under Section 379 IPC in Cr.No.1298 of 2006, under Section 379 IPC in Cr.No.1305 of 2006 and the ground case is registered under Section 392 r/w.397 IPC in Cr.No.1306 of 2006.

3. The petitioner has challenged the order of detention mainly on the following grounds :-

(1) The arrest of the detenu was not informed to the family members and therefore there was violation of the ratio of the decision of the Supreme Court reported in AIR 1997 SC 610 (D.K. BASU v. STATE OF WEST BENGAL).

(2) The detenu was in custody in connection with several cases and bail application had not been filed and, therefore, there was no possibility of the detenu coming out of jail and there could not have been any necessity of preventive detention.

(3) The detention order was passed on the basis of the ground case in Cr.No.1306/2006, but he had been remanded in connection with Cr.Nos.1298/2006 and 1305/2006 and the detaining authority has furnished remand order only in Cr.No.1306 of 2006 and the remand order relating to other two cases have not been furnished inspite of the request made in the representation dated 2.9.2006.

4. So far as the first submission is concerned, it has been indicated in the counter affidavit that the fact that detenu was arrested was informed to the father of the detenu and copy of the arrest memo was furnished. This factual assertion on the part of the respondents has not been further denied. Therefore, we are unable to accept the submission made on behalf of the petitioner.

5. So far as the second submission is concerned, it is no doubt true that no bail application has been filed on behalf of the detenu in any of the three cases in connection with which he had been remanded by the Magistrate. However, the detaining authority, on the basis of the materials on record had come to the conclusion that there is every possibility of bail petition being filed and the detenu being released on bail after a lapse of sometime as in similar cases the persons are being released on bail either by the Sessions Court or by the higher Courts. It cannot be said that the aforesaid subjective satisfaction recorded by the detaining authority is without any basis and it is therefore difficult for the court while dealing with the Habeas Corpus Petition to come to any different conclusion.

6. The other contention of the petitioner is to the effect that even though copy of the remand order in connection with Cr.No.1306 of 2006 had been furnished, copies of the remand orders in connection with Cr.Nos.1298 and 1305 of 2006 had not been furnished inspite of the request made in the representation dated 2.9.2006.

7. So far as this aspect is concerned, in the counter affidavit filed on behalf of the second respondent, it has been merely indicated,

"... The detaining authority had not relied the remand order in the adverse case and hence the remand order of those cases were not furnished in the booklet. However, those remand order were forwarded to the Government for the purpose of furnishing it to the petitioner as requested in his representation dated 2.9.2006."

8. In paragraph 3 of the grounds of detention, it has been indicated that the detenu Muthu was arrested in the ground case. It was further indicated:

"3. ... During investigation it is revealed that he was involved in Hathampatti P.S. Cr.No.1298/2006, 1305/2006 u/s.379 IPC and hence he was arrested in these cases also. During investigation, the accused Tr. Jagadeesan was involved in Hasthampatty P.S. Cr.No.1299/2006, u/s.379 IPC and Ammapet P.S. Cr.No.1438/2006, u/s.379 IPC and therefore he was arrested in these cases also. The three accused were produced before the Judicial Magistrate No.3, Salem on 24.7.2006 and remanded to judicial custody at Central Prison, Salem till 7.8.2006. The Judicial Magistrate No.3, Salem has recorded in the remand order that when the accused Tr. Muthu was produced before him he has no complaints. In this case the recovered articles were sent to the court under form 95. The case is under investigation."

9. A fair reading of the aforesaid grounds prima facie indicate as if the detaining authority has relied upon the remand orders in all the cases. Therefore, there is necessity to furnish copy of the remand order. However, even assuming that the detaining authority had not specifically relied upon the remand orders in those two cases, in connection with which the detenu was also remanded, a specific request had been made in the representation dated 2.9.2006 for furnishing copies of the said remand orders. It is obvious that the detenu wanted to have copy of all the relevant documents with a view to make a proper representation. As a matter of fact, the detaining authority in his counter has indicated that those remand orders had been forwarded to the Government for the purpose of serving them as requested in the representation dated 2.9.2006. Once the detaining authority had forwarded those documents to the Governments for supplying to the detenu, it was expected of the Government to

serve such copies, particularly when a specific request had been made in the representation.

10. In the present case, the detaining authority himself has indicated that since in the representation a specific request has been made to furnish copies of the remand order, such copies have been forwarded to the Government for serving on the detenu and yet those copies had not been served.

11. In our considered opinion, failure on the part of the Government to furnish copies of the remand orders inspite of the specific request made in representation, in the peculiar facts and circumstances of the case, has the effect of vitiating the further detention of the detenu.

12. For the aforesaid reason, the Habeas Corpus Petition is allowed and the order of detention is quashed. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

dpk

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Govt.of Tamilnadu,
Prohibition & Excise Department,
Fort St. George,
Chennai 600 009.

2. The Commissioner of Police,
Salem City,
Salem District.

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3. The Public Prosecutor,
High Court, Madras
4. The Superintendent of Central Prison,
Salem.
5. The Joint Secretary to Govt.
Public (Law & Order) Dept.
Fort St. George,
Chennai-9.

JUDGMENT IN HCP.960/2006

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